

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

Plaintiff,

- vs -

ADESA New York, Inc.  
(d/b/a ADESA Buffalo)

Defendant.

**ANSWER**

05-CV-00692 JTE

The defendant, ADESA New York, LLC (incorrectly named herein as ADESA New York, Inc. d/b/a ADESA Buffalo), (hereinafter “ADESA”), by its attorneys, Nixon Peabody LLP, hereby answers the allegations of the Complaint as follows:

NATURE OF THE ACTION

This unnumbered paragraph purports to summarize the nature of the claims set forth in the Complaint and does not appear to require an answer, but to the extent that an answer is deemed required, the defendant denies that it has ever discriminated against any plaintiff on any basis.

JURISDICTION AND VENUE

1. This paragraph purports to state the statutes relied upon to form the basis for the Complaint and does not appear to require an answer, but to the extent that an answer is deemed required, the defendant denies that it has have ever discriminated against any plaintiff on any basis.

2. This paragraph contains a statement of the alleged basis for venue in this District and contains no allegations of fact for which an answer is required; however, to the extent an

answer is deemed required, the defendant admits that the plaintiffs were employed within the Western District of New York.

PARTIES

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

4. Admit.

5. Admit.

CONCILIATION

6. Deny.

STATEMENT OF CLAIMS

7. Deny.

8. Deny.

9. Deny.

JURY DEMAND

10. Defendant demands a jury trial.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

11. The Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

12. The plaintiffs' claims are barred, in whole or in part, by principles of waiver, release, estoppel, accord and satisfaction and/or laches.

**THIRD AFFIRMATIVE DEFENSE**

13. The plaintiffs' entitlement to any damages is limited and/or precluded to the extent that the plaintiffs have failed to mitigate their damages or otherwise failed to suffer any economic loss.

**FOURTH AFFIRMATIVE DEFENSE**

14. The plaintiffs' claims, if any, for compensatory, consequential and punitive damages are not available under the ADEA.

**FIFTH AFFIRMATIVE DEFENSE**

15. The plaintiffs' claims, if any, for liquidated or punitive damages are barred because there is no allegation of a willful violation of the ADEA and at no time did the defendant know of or show reckless disregard for whether its actions were prohibited by the ADEA.

**SIXTH AFFIRMATIVE DEFENSE**

16. The plaintiffs' claims are barred to the extent that the plaintiffs and/or the EEOC failed to satisfy the statutory and/or jurisdictional prerequisites for the commencement of this action.

**SEVENTH AFFIRMATIVE DEFENSE**

17. The plaintiffs' claims are barred to the extent that the plaintiffs and/or the EEOC failed to exhaust all necessary administrative remedies, procedures and time limits prior to filing this action.

**EIGHTH AFFIRMATIVE DEFENSE**

18. The plaintiff's claims for compensatory damages, emotional distress and punitive damages are limited by the statutory "caps" on the amount and/or exclusion of such damages.

**NINTH AFFIRMATIVE DEFENSE**

19. The Complaint must be dismissed, in whole or in part, to the extent that claims of discrimination asserted in the Complaint were neither encompassed in the discrimination charge filed with the EEOC, nor the administrative investigation thereof.

**TENTH AFFIRMATIVE DEFENSE**

20. The Complaint must be dismissed because the EEOC failed to conduct the conference and conciliation process in the manner and in the spirit required by Title VII.

DATED: Buffalo, New York  
December 2, 2005

NIXON PEABODY LLP

By: /s/ Mark A. Molloy

Mark A. Molloy

*Attorneys for Defendant*

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Gwendolyn Young Reams, Esq.  
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**CERTIFICATE OF SERVICE**

I, **MARK MOLLOY**, do hereby certify that on December 2, 2005, a copy of the defendants' Answer was served by first-class mail, postage prepaid and placed in a post office box regularly maintained by the United States Government at Buffalo, New York in said County of Erie, directed to the following:

James L. Lee, Esq.  
Deputy General Counsel

Gwendolyn Young Reams, Esq.  
Associate General Counsel

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Dated: December 2, 2005

/s/ Mark A. Molloy

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